

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

ZAO LIN LIU,

Plaintiff,

v.

CAROLYN COLVIN, Acting  
Commissioner of Social Security,

Defendant.

Case No. C14-1389RSM

ORDER ON SOCIAL SECURITY  
DISABILITY

**I. INTRODUCTION**

Plaintiff, Zao Lin Liu, brings this action pursuant to 42 U.S.C. §§ 405(g), and 1383(c)(3), seeking judicial review of a final decision of the Commissioner of Social Security denying her application for Disability Insurance Benefits and Supplemental Security Income disability benefits, under Title II and Title XVI of the Social Security Act. This matter has been fully briefed and, after reviewing the record in its entirety, the Court REVERSES the Commissioner's decision.

**II. BACKGROUND**

On June 28, 2011, Plaintiff filed concurrent applications for Social Security Disability Insurance (SSDI) and Supplemental Security Income disability benefits (SSI), alleging disability commencing on September 1, 2007. Tr. 188-203. She later amended her onset date to June 2, 2011. Tr. 32. Her applications were denied initially and upon reconsideration. Tr.

71-120. A hearing was held before Administrative Law Judge (“ALJ”) M.J. Adams on December 17, 2012. Tr. 45-70. On January 25, 2013, Judge Adams issued an unfavorable decision. Tr. 27-43.

On July 15, 2014, the Appeals Council denied Ms. Liu’s request for review, making the ALJ’s decision the final agency decision.<sup>1</sup> Plaintiff timely filed this judicial action.

### III. JURISDICTION

Jurisdiction to review the Commissioner’s decision exists pursuant to 42 U.S.C. §§ 405(g) and 1383(c)(3).

### IV. STANDARD OF REVIEW

Pursuant to 42 U.S.C. § 405(g), this Court may set aside the Commissioner’s denial of social security benefits when the ALJ’s findings are based on legal error or not supported by substantial evidence in the record as a whole. *Bayliss v. Barnhart*, 427 F.3d 1211, 1214 (9th Cir. 2005). “Substantial evidence” is more than a scintilla, less than a preponderance, and is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401 (1971); *Magallanes v. Bowen*, 881 F.2d 747, 750 (9th Cir. 1989). The ALJ is responsible for determining credibility, resolving conflicts in medical testimony, and resolving any other ambiguities that might exist. *Andrews v. Shalala*, 53 F.3d 1035, 1039 (9th Cir. 1995). While the Court is required to examine the record as a whole, it may neither reweigh the evidence nor substitute its judgment for that of the Commissioner. *Thomas v. Barnhart*, 278 F.3d 947, 954 (9th Cir. 2002). When the evidence is susceptible to more than one rational interpretation, it is the Commissioner’s conclusion that must be upheld. *Id.*

---

<sup>1</sup> The Council’s denial appears to have been omitted from the administrative record.

1 The Court may direct an award of benefits where “the record has been fully developed  
2 and further administrative proceedings would serve no useful purpose.” *McCartey v.*  
3 *Massanari*, 298 F.3d 1072, 1076 (9th Cir. 2002) (citing *Smolen v. Chater*, 80 F.3d 1273, 1292  
4 (9th Cir. 1996)). The Court may find that this occurs when:

5 (1) the ALJ has failed to provide legally sufficient reasons for rejecting the  
6 claimant’s evidence; (2) there are no outstanding issues that must be resolved  
7 before a determination of disability can be made; and (3) it is clear from the  
8 record that the ALJ would be required to find the claimant disabled if he  
considered the claimant’s evidence.

9 *Id.* at 1076-77; *see also Harman v. Apfel*, 211 F.3d 1172, 1178 (9th Cir. 2000) (noting that  
10 erroneously rejected evidence may be credited when all three elements are met).

## 11 V. EVALUATING DISABILITY

12 As the claimant, Ms. Liu bears the burden of proving that she is disabled within the  
13 meaning of the Social Security Act (the “Act”). *Meanel v. Apfel*, 172 F.3d 1111, 1113 (9th Cir.  
14 1999) (internal citations omitted). The Act defines disability as the “inability to engage in any  
15 substantial gainful activity” due to a physical or mental impairment which has lasted, or is  
16 expected to last, for a continuous period of not less than twelve months. 42 U.S.C. §§  
17 423(d)(1)(A), 1382c(a)(3)(A). A claimant is disabled under the Act only if her impairments are  
18 of such severity that she is unable to do her previous work, and cannot, considering her age,  
19 education, and work experience, engage in any other substantial gainful activity existing in the  
20 national economy. 42 U.S.C. §§ 423(d)(2)(A); *see also Tackett v. Apfel*, 180 F.3d 1094, 1098-  
21 99 (9th Cir. 1999).

22 The Commissioner has established a five step sequential evaluation process for  
23 determining whether a claimant is disabled within the meaning of the Act. *See* 20 C.F.R. §§  
24 404.1520, 416.920. The claimant bears the burden of proof during steps one through four. At  
25  
26  
27  
28

1 step five, the burden shifts to the Commissioner. *Id.* If a claimant is found to be disabled at  
2 any step in the sequence, the inquiry ends without the need to consider subsequent steps. Step  
3 one asks whether the claimant is presently engaged in “substantial gainful activity” (SGA). 20  
4 C.F.R. §§ 404.1520(b), 416.920(b).<sup>2</sup> If she is, disability benefits are denied. If she is not, the  
5 Commissioner proceeds to step two. At step two, the claimant must establish that she has one  
6 or more medically severe impairments, or combination of impairments, that limit her physical  
7 or mental ability to do basic work activities. If the claimant does not have such impairments,  
8 she is not disabled. 20 C.F.R. §§ 404.1520(c), 416.920(c). If the claimant does have a severe  
9 impairment, the Commissioner moves to step three to determine whether the impairment meets  
10 or equals any of the listed impairments described in the regulations. 20 C.F.R. §§ 404.1520(d),  
11 416.920(d). A claimant whose impairment meets or equals one of the listings for the required  
12 twelve-month duration requirement is disabled. *Id.*

15 When the claimant’s impairment neither meets nor equals one of the impairments listed  
16 in the regulations, the Commissioner must proceed to step four and evaluate the claimant’s  
17 residual functional capacity (“RFC”). 20 C.F.R. §§ 404.1520(e), 416.920(e). Here, the  
18 Commissioner evaluates the physical and mental demands of the claimant’s past relevant work  
19 to determine whether she can still perform that work. 20 C.F.R. §§ 404.1520(f), 416.920(f). If  
20 the claimant is able to perform her past relevant work, she is not disabled; if the opposite is  
21 true, then the burden shifts to the Commissioner at step five to show that the claimant can  
22 perform other work that exists in significant numbers in the national economy, taking into  
23 consideration the claimant’s RFC, age, education, and work experience. 20 C.F.R. §§  
24 404.1520(g), 416.920(g); *Tackett*, 180 F.3d at 1099, 1100. If the Commissioner finds the

---

27  
28 <sup>2</sup> Substantial gainful employment is work activity that is both substantial, *i.e.*, involves significant physical and/or  
mental activities, and gainful, *i.e.*, performed for profit. 20 C.F.R. § 404.1572.

1 claimant is unable to perform other work, then the claimant is found disabled and benefits may  
2 be awarded.

### 3 VI. ALJ DECISION

4 Utilizing the five-step disability evaluation process,<sup>3</sup> the ALJ found:

5 **Step one:** Ms. Liu had not engaged in substantial gainful activity since June 2, 2011,  
6 the alleged onset date. Tr. 32.

7 **Step two:** Ms. Liu had medical impairments that caused more than a minimal effect on  
8 her ability to perform basic work activities. Specifically, she suffered from the following  
9 “severe” impairments: anxiety disorder and depressive disorder. Tr. 32.  
10

11 **Step three:** These impairments are not severe enough to meet the requirements of any  
12 listed impairment in Appendix 1, Subpart P, Regulations No. 4. Tr. 32.  
13

14 **Residual Functional Capacity:** Ms. Liu had the RFC to perform a full range of work at  
15 all exertion levels but with the following nonexertional limitations: the claimant can  
16 understand, remember and carry out simple instructions required of jobs classified at a level of  
17 SVP 1 and 2 or unskilled work. She can make judgments on simple work-related decisions and  
18 can respond appropriately to supervision, co-workers and deal with changes all within a stable  
19 work environment. Tr. 34.  
20

21 **Step four:** Ms. Liu was capable of performing her past relevant work as a minibar  
22 restocker, room service and housekeeper, and such work would not require the performance of  
23 work-related activities precluded by the claimant’s RFC. Tr. 38. Therefore, she was not  
24 disabled. Tr. 39.  
25

26 ///

27 ///

28 

---

<sup>3</sup> 20 C.F.R. §§404.1520, 416.920.

## VII. ISSUES ON APPEAL

Plaintiff argues that the ALJ committed reversible error by failing to provide her a full and fair hearing. Specifically, she alleges that the ALJ unreasonably limited the scope of the foreign language translator's services. Plaintiff also challenges the ALJ's evaluation of and weight accorded to the medical opinions of examining physician Dr. Cassandra Clark, examining psychologist Dr. Wayne Dees, her treating psychiatrist Dr. Dannica Lin, and the State Agency consultants Dr. John Robinson and Dr. Richard Borton.

## VIII. DISCUSSION

### A. Full and Fair Hearing Opportunity

Plaintiff first argues that the ALJ committed reversible error by unreasonably limiting the scope of her interpreter's services at the hearing. The government responds that the Plaintiff clearly understood the proceedings, as evidenced by the hearing transcript, and therefore there was no error. The Court disagrees.

The ALJ has an affirmative "duty to fully and fairly develop the record and to assure that the claimant's interests are considered . . . even when the claimant is represented by counsel." *Celaya v. Halter*, 332 F.3d 1177, 1183 (9th Cir. 2003) (ellipsis in original) (quoting *Brown v. Heckler*, 713 F.2d 441, 443 (9th Cir. 1983)); see *Tonapetyan v. Halter*, 242 F.3d 1144, 1150 (9th Cir. 2001). The Social Security Administration's Program Operations Manual ("POM") states that it "will provide an interpreter free of charge, to any individual requesting language assistance, or when it is evident that such assistance is necessary to ensure that the individual is not disadvantaged." See Social Security Administration Program Operations Manual System, DI § 23040.001(A), available at, <https://secure.ssa.gov/apps10/poms.nsf/lnx/0423040001> ("POMS").

1 Although the POM does not have the force of law, generally a violation of the  
2 interpreter policy is viewed as a failure to provide a full and fair hearing. *See Novikov v.*  
3 *Astrue*, 2008 U.S. Dist. LEXIS 78062, 2008 WL 4162941, at \*5 (W.D. Wash. Sept. 2, 2008)  
4 (remanding when it was clear that interpreter needed for ALJ to fully and fairly develop the  
5 record). The standard for determining whether an interpreter was needed is a practical one,  
6 often examining the following factors: (1) the claimant's self-reported language ability on the  
7 disability report form and at the hearing; (2) the claimant's apparent ability to converse at the  
8 disability hearing; and (3) whether the claimant was represented by counsel. *See Novikov*,  
9 2008 U.S. Dist. LEXIS 78062, 2008 WL 4162941 (remanding where transcript of hearing  
10 made it plain that an interpreter was needed because unrepresented claimant made plainly  
11 nonsensical statements or clearly misunderstood questions). Ultimately, the question is  
12 whether the claimant, under the circumstances, was disadvantaged in the hearing by his or her  
13 language difficulties.  
14  
15

16 In order to find that an interpreter was needed based on the transcript of the hearing, the  
17 misunderstandings must rise above the normal misstatements or clarifications involved when  
18 even fluent English speakers converse. The Court acknowledges that having to ask a question  
19 twice to get a clear answer, or to ask a question in a different way does not itself suffice to  
20 show that the lack of an interpreter has disadvantaged a claimant, since introducing an  
21 interpreter does not render all communication flawless and brings its own communication  
22 challenges. Some greater problem of understanding is needed to show that an interpreter was  
23 necessary. *See, e.g., Novikov*, 2008 U.S. Dist. LEXIS 78062, 2008 WL 4162941, at \*4 (finding  
24 an interpreter was necessary because, among dozens of other similar examples, when asked,  
25  
26  
27  
28

1 “How do you spend your time? What do you do all day?” the claimant responded, “Oh, if, if I  
2 feel myself let down, I, I console him for finding it.”).

3 In this case, the Court finds sufficient evidence that Ms. Liu was disadvantaged in the  
4 hearing by her language difficulties. First, there is evidence that Ms. Liu does not speak fluent  
5 English. For example, when the ALJ inquired about her education, the following exchange  
6 occurred:  
7

8 Q. And you have degrees from the university?

9 A. Yes.

10 Q. And what was your degree in?

11 A. I was study the medical.  
12

13 Tr. 53. Likewise:

14 Q. [by counsel] How does your depression affect you?

15 ALJ: Excuse me. Do you know the answer to how does your  
16 depression affect you without having an interpreter interpret  
17 that for you? Do you know what she’s asking you? Could you  
18 answer the question, then, instead of having the interpreter go  
19 through it?

20 Clmt: Some of word I couldn’t understand.

21 ALJ: Which word do you not understand?

22 Clmt: Could you ask me again?

23 Q. How does your depression affect you?

24 A. Affect me.

25 ALJ: Affect you?

26 Clmt: Mm-hmm.

27 ALJ: Okay. Interpret that please.  
28



Tr. 57.

Further, when the ALJ was not getting clear answers to his questions, he simply told Ms. Liu to “focus,” or that her answers were “not relevant,” or “that’s not really what I’m trying to figure out here,” rather than attempt to ascertain whether a language barrier was the issue. *See, e.g.*, Tr. 55-57.

When Ms. Liu’s attorney asked Ms. Liu if she needed the interpreter’s assistance with a question, the ALJ immediately interjected with a seemingly baseless limitation on the interpreter’s participation:

Q. What kinds of problems have you had being around other people? Do you need the interpreter to explain the question?

ALJ: Excuse me. That’s the problem here. The question does not need to be explained in order to get an answer. The question should be phrased correctly. And then a verbatim –

Atty: Yes, your honor.

ALJ: -- interpretation.

Atty: Yes. If I could get a verbatim interpretation. I apologize. That’s what I meant.

ALJ: Okay. Well, that’s what the problem is here, and I perceive it as a difficulty with the situation of the interpreter is responding to the question. And that’s not appropriate here. I want the claimant to tell me exactly what words you do not understand in a question. Then we’ll interpret those words into your language that you studied in China and used until you came to the United States and studied and learned English. So we’re to go through this very carefully and get a verbatim interpretation. So what is the question?

Tr. 60-61. Not only was the ALJ condescending in addressing Ms. Liu, and potentially intimidating as a result, the Court finds it nonsensical to ask a non-English speaker to parse out a single word or words she does not understand in a question when she may not know what it is

1 about a particular question that she does not understand, or may not realize she did not  
2 understand until reviewing her testimony in hindsight.

3 Even more troubling, is the ALJ's apparent reluctance to use an interpreter at all during  
4 the proceedings. In fact, from the beginning of the hearing he appeared to make efforts to  
5 pressure Ms. Liu into declining an interpreter completely:  
6

7 ALJ: Good morning.

8 Clmt: Good morning.

9 ALJ: Are you –

10 Clmt: Zao Liu.

11 ALJ: Liu, yes. And you speak good English, don't you, and write  
12 good English?

13 Clmt: Yeah. [Inaudible] yeah.

14 ALJ: I don't think we need the interpreter, do you?

15 Atty: Your honor, she has pretty good English, but I would prefer to  
16 have interpreter here just in case she doesn't understand the  
17 entire proceedings.

18 ALJ: Okay. Well, the mere fact that she wasn't born in the United  
19 States doesn't negate the fact that the record supports a finding  
20 that she has good English speaking ability; good understanding  
21 of the English language; and good ability to write and read.  
22 And is also highly educated.

23 Atty: I realize that, your honor, but she did request that the interpreter  
24 be here to be able to make sure that she understood the entire  
25 proceeding.

26 ALJ: We'll provide the interpreter for that purpose, but I'm not going  
27 to have the interpreter do a verbatim translation, or verbatim  
28 interpretation, unless there is any -- if you have any difficulty  
understanding something -- I'm addressing the claimant at this  
time -- if you have any difficulty understanding anything I say  
in English, please raise your hand and we'll make sure it is  
interpreted for you.

1 Tr. 47.

2 In her request for an appeal, Ms. Liu explained that the denial of a verbatim interpreter  
3 was harmful to her because it denied her the full opportunity to speak about her conditions and  
4 how they affected her. R. 263. Although she can communicate in English for much of her  
5 daily living, she was confused during the hearing and did not fully understand the questions.  
6 *Id.* She also felt that speaking in English limited her ability to communicate the complexities  
7 of her conditions. *Id.*

8  
9 The government argues that Ms. Liu's assertions as to her comprehension of the  
10 proceedings is belied by the record – namely, by the fact that she did not seek further  
11 clarification of the proceedings during the hearing. However, the Court finds it unreasonable to  
12 expect that after being told more than once by the ALJ that she would not be receiving  
13 verbatim interpretation, she would continue to seek clarification, particularly in a situation that  
14 is inherently stressful for most claimant's.

15  
16 Accordingly, on this record, the Court finds that Plaintiff was not afforded a full and  
17 fair hearing by the ALJ and remand is appropriate.

18  
19 **B. The ALJ's Assessment of the Medical Evidence**

20  
21 Given the Court's findings above, the Court does not reach Plaintiff's arguments  
22 regarding the analysis of, and weight given to, her examining doctors and the state's  
23 consultative experts.

24 **IX. CONCLUSION**

25 For the foregoing reasons, the Commissioner's decision is REVERSED and the case is  
26 REMANDED for further administrative proceedings consistent with this Order. On remand,  
27 Ms. Liu shall be afforded an interpreter for verbatim interpretation at rehearing. Further, the  
28

1 ALJ shall reevaluate the medical and other opinion evidence, Ms. Liu's RFC, her credibility  
2 and, if necessary, steps two, three, four and five of the five step sequential evaluation.

3 Plaintiff may choose to re-contact the treating and examining sources for updated  
4 records and other medical source statements and obtain additional medical and vocational  
5 expert testimony to present at the hearing.  
6

7 DATED this 9<sup>th</sup> day of April 2015.

8 

9  
10 RICARDO S. MARTINEZ  
11 UNITED STATES DISTRICT JUDGE  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28